

## **NOTICE OF PUBLIC MEETING**

### **REGARDING THE CERTIFICATE OF NEED (CON) STATUTE AND PROGRAM**

**The Director of Health is conducting a Public Meeting at which the Department will receive written and oral testimony regarding the Rhode Island Certificate of Need (CON) statute and program. The meeting is being held to provide the public and all interested parties with an opportunity to advise the Director and the Department regarding specific amendments to the statute and the program that may be proposed to improve the equitable application of the CON program. The Public Meeting will be held at 10 AM on Tuesday, 11 December 2007 in the Auditorium of the Cannon Building located at 3 Capitol Hill, Providence, RI 02908. Written testimony may be filed with the Department prior to and at the Public Meeting. Persons providing oral testimony are requested to file their comments in writing as well. Testimony at the Public Meeting will be recorded and a Hearing Officer will conduct the proceedings. To facilitate and focus the testimony, a background document regarding the CON Program is attached. The Department is particularly interested in responses to the following questions:**

- 1. What specific requirements of the present statute and program are “inequitable” and why are they inequitable?**
- 2. What specific categories of review should be added, eliminated or revised?**

**3. Should the existing dollar thresholds for review be altered and, if so, what specific changes are appropriate and why should the threshold(s) be revised?**

**4. Should the existing statutory exemptions be altered and, if so, how?**

**Written testimony filed prior to the meeting should be sent to the attention of Donald C. Williams, Associate Director for Environmental and Health Services Regulation, Room 410, Department of Health 3 Capitol Hill, Providence, RI 02908 or via email at Donald.Williams@health.ri.gov.**

**Mr. Williams is available at 401 222-1600 regarding any inquiries in this matter.**

## **BACKGROUND**

**“LEVELING THE PLAYING FIELD”:**

### **CERTIFICATE OF NEED AND HEALTH FACILITY LICENSURE**

#### **The Certificate of Need Program**

**First enacted in 1968, the Rhode Island Certificate of Need (CON) program is intended to prevent unnecessary duplication of expensive medical services and equipment by requiring the prior review of the Health Services Council (a 24 member advisory body) and the approval of the Director of Health. Currently, a CON is required for, but not limited to, the following activities:**

**A. construction, development or establishment of a new healthcare facility**

**B. a capital expenditure for:**

**1. health care equipment in excess of \$1,000,000**

**2. construction or renovation of a health care facility in excess of \$2,000,000**

**3. an acquisition by or on behalf of a health care facility or Health Maintenance Organization (HMO) by lease or donation**

**4. acquisition of an existing health care facility, if the services or the bed capacity of the facility will be changed, in the following ways:**

**a. change in bed capacity which increases the total number of beds.**

**b. change in bed capacity which redistributes beds among discrete services (e.g., obstetrics, pediatrics, medical, surgical) or levels of care (e.g., intensive coronary, special, post acute, skilled nursing, intermediate, rehabilitative) or relocates beds from one physical facility or site to another by ten (10) beds or 10%, whichever is less, in any two year period.**

**c. the addition of a health service not provided in or through the facility throughout the previous twelve (12) months.**

**d. the termination of a health service provided in or through the facility.**

**C. any capital expenditure which results in an increase in bed capacity of a hospital and inpatient rehabilitation centers (including drug and/or alcohol abuse treatment centers).**

**D. any capital expenditure that results in an increase in bed capacity of a nursing facility in excess of 10 beds or 10% of facility's licensed**

**bed capacity, whichever is greater.**

**E. the offering of a new health service with annualized costs in excess of \$750,000**

**F. predevelopment activities not part of a proposal, but which cost in excess of \$2,000,000**

**G. establishment of an additional inpatient premise of an existing inpatient health care facility**

**H. tertiary or specialty care services**

**Rhode Island's CON program has nearly a forty-year history during which many changes have been made to the authorizing statute and related regulations. Initially, the CON program covered only hospitals and, beginning in the early 1970's, nursing facilities. By the late 1970's, the CON Program was reviewing the establishment of all categories of new health care facilities as well as substance abuse treatment facilities and the acquisition of major medical equipment by providers of any kind. Similarly, across the country, forty-nine of the fifty states adopted similar CON programs as a requirement of receiving federal monies for health planning under the provisions of the National Health Planning and Resources Development Act of 1974 (Public Law 93-641).**

**With mixed results and growing political opposition, federal support of health planning and CON programs waned and finally ended in the late 1980s and early 1990s. Many states terminated or dramatically reduced the scope of their CON programs as the federal support for health planning and CON was withdrawn. Presently, thirty-seven**

states and the District of Columbia have CON programs. There was renewed interest at both the national level and in Rhode Island in relying upon the forces of competition as the primary strategy to contain health care costs. Rhode Island developed its third and last State Health Plan in 1992. In the 1990s the Rhode Island CON statute was amended several times to increase the capital expenditure thresholds for reviews and to reduce the ambit of the CON program to pertain to inpatient health care facilities and ambulatory surgery centers. The CON statute was also amended to permit the Director to identify tertiary or specialty care services in regulation that are required to obtain a CON before a facility or a provider can initiate such services, regardless of the capital expenditure required.

In summary:

There is a universal CON review requirement for the acquisition of medical equipment costing in excess of \$1 million and for the initiation or expansion of tertiary care services, regardless of health care facility type or health care provider type.

Additionally, health care facilities that are subject to CON review relating to capital expenditures and offering new services are:

Ø Hospitals

Ø Nursing facilities

Ø Freestanding ambulatory surgery center (FASC)

Ø Inpatient hospices

**All other health care facilities or providers are not subject to CON review relating to capital expenditures and offering new services, e.g.:**

**Ø Physicians (including physician-owned “operatories”)**

**Ø Ambulatory care facilities (e.g., community health centers, urgent care centers)**

**Ø Home health agencies**

**The Certificate of Need regulations are available here:**

**<http://www2.sec.state.ri.us/dar/regdocs/released/pdf/DOH/4475.pdf>**

**The Certificate of Need statute is available here:**

**<http://www.rilin.state.ri.us/Statutes/TITLE23/23-15/INDEX.HTM>**

**The Health Facility Licensing Act:**

**Initial Licensure and Change in Owner/Operator Reviews**

**The Rhode Island Health Facilities Licensing Act./ Chapter 23-17 of the Rhode Island General Laws, provides the statutory basis for the**

licensure program that licenses hospitals, nursing facilities, freestanding ambulatory surgery facilities, physician office based surgery facilities (“operatories”) and several other categories of health facilities. By statute, “practitioners offices” [NOTE: see statutory definition\* below] are exempt from the provisions of the Act. The Act provides for a licensing program to assure the maintenance of “minimum standards”. In 1984, the Act was amended to require a review by the Health Services Council prior to the issuance of a new facility license related to a change in the owner and/or operator of health care facilities. In 1996, the Act was amended to require the Health Services Council to review all new initial licenses as well as licenses related to a changes in the owner and/or operator of health care facilities. However, health care facility applicants that require a CON are not also required to obtain a separate initial licensure approval under this Act.

As required, the Health Services Council review utilizes the following statutory criteria in making a recommendation to the Director of Health regarding such applications:

(1) The character, commitment, competence, and standing in the community of the proposed owners, operators, or directors of the health care facility;

(2) In cases of initial licensure or of proposed change in owner, operator, or lessee, the extent to which the facility will provide or will continue to provide, without material effect on its viability at the time of initial licensure or of change of owner, operator, or lessee, safe

and adequate treatment for individuals receiving the health care facility's services;

(3) The extent to which the facility will provide or will continue to provide safe and adequate treatment for individuals receiving the health care facility's services; and

(4) The extent to which the facility will provide or will continue to provide appropriate access with respect to traditionally underserved populations and in consideration of the proposed continuation or termination of health care services by the health care facility.

The regulatory requirements for such review are set forth in the individual licensing regulations for each covered category of facility. By way of example, the regulatory requirements for ambulatory surgery facilities can be found in section 3 of the regulations available at:

[http://www2.sec.state.ri.us/dar/regdocs/released/pdf/DOH/DOH\\_3500.pdf](http://www2.sec.state.ri.us/dar/regdocs/released/pdf/DOH/DOH_3500.pdf)

Other categories of health care facility regulations can be accessed at:

<http://www.sec.state.ri.us/rules/>

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\*The term "health care facility" shall not apply to organized ambulatory care facilities owned and operated by professional service corporations as defined in chapter 5.1 of title 7, as amended (the "Professional Service Corporation Law"), or to a private practitioner's (physician, dentist, or other health care provider) office or group of the practitioners' offices (whether owned and/or operated



**by an individual practitioner, alone or as a member of a partnership, professional service corporation, organization, or association).**